

1 JOSEPH P. RUSSONIELLO (SBN 44332)

2 United States Attorney

2 JOANN M. SWANSON (SBN 88143)

3 Chief, Civil Division

3 ABRAHAM A. SIMMONS (SBN 146400)

4 Assistant United States Attorney

5 450 Golden Gate Avenue, 9th Floor

5 San Francisco, California 94102-3495

6 Telephone: (415) 436-7264

6 Facsimile: (415) 436-6748

7 Email: abraham.simmons@usdoj.gov

7 Attorneys for Federal Defendants

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 DORA BAires, individually and on behalf)
12 of the estate of JUAN CARLOS BAires;)
13 and TEOFILo MIRANDA, an individual,)

No. C 09-5171 CRB

E-FILING CASE

14 Plaintiffs)

15 v.)
16 THE UNITED STATES OF AMERICA;)
16 THE DEPARTMENT OF HOMELAND)
17 SECURITY; UNITED STATES)
17 IMMIGRATION HEALTH SERVICES;)
18 JANET NAPOLITANO, an individual;)
18 JOHN P. TORRES, an individual;)
19 NANCY ALCANTAR, an individual;)
19 JOSE RODRIGUEZ, an individual;)
20 TIMOTHY SHACK, M.D., an individual;)
20 CLAUDIA MAZUR, R.N., an individual;)
21 THE COUNTY OF KERN;)
21 KERN COUNTY SHERIFF'S)
22 DEPARTMENT; KERN MEDICAL)
22 CENTER; LERDO DETENTION)
23 FACILITY; DONALD YOUNGBLOOD, an)
23 individual; KHOSROW MOSTOFI, M.D.,)
24 an individual; UNKNOWN ICE)
24 OFFICIALS; UNKNOWN LERDO)
25 CORRECTIONAL OFFICERS;)
25 UNKNOWN LERDO MEDICAL STAFF;)
26 UNKNOWN LERDO)
26 ADMINISTRATORS; UNKNOWN KERN)
27 MEDICAL CENTER STAFF and DOES)
27 1 through 100,)
28 Defendants.)

12 DECLARATION OF COUNSEL IN
12 SUPPORT OF UNITED STATES'
13 AMENDED NOTICE OF MOTION AND
13 MOTION TO DISMISS OR, IN THE
14 ALTERNATIVE, FOR SUMMARY
14 JUDGMENT
14 [Fed.R.Civ.P. 12, 56]

Date: July 16, 2010
Time: 8:00 a.m.
Place: Courtroom 8, 19th Fl.
Before: Hon. Charles R. Breyer

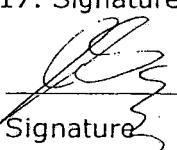
I, Abraham A. Simmons, declare as follows:

1. I am an Assistant United States Attorney in the Northern District of California and I have been assigned to represent the government in the above-captioned matter. If called to testify I would and could competently testify as to the facts in this declaration.

2. Attached as Exhibit 1 electronically to this declaration is a true and correct copy of an excerpt of the Multi-Agency Detention Services contract produced by co-defendant Kern County as part of this litigation. The contract purports to set out significant terms regarding the basis upon which Kern County would provide for the “housing, safekeeping, and subsistence” of federal prisoners and detainees.

I declare under penalty of perjury under the laws of the United States that the above is true and accurate. Executed this 12th day in June, 2010, in San Francisco, California.

ABRAHAM A. SIMMONS (SBN 146400) /s/

1. Agreement Number 97-99-0196	2. Effective Date April 1, 2007	3. Facility Code(s) 9CS, 9LP, 0BL
4. Issuing Federal Agency United States Marshals Service Witness Security & Prisoner Operations Division Washington, DC 20530-1000		5. Local Government Kern County Sheriff's Department 1350 Norris Road Bakersfield, CA 93308
		Tax ID #
6. Appropriation Data 15X1020		7. Local Contact Person: Lieutenant Earl Barnes, Facility Administrator
		8. Tel: (661) 391-7920 Fax: (661) 391-7373
		Email:
Services	Number of Federal Beds	Per-Diem Rate
9. This agreement is for the housing, safekeeping, and subsistence of federal prisoners, in accordance with content set forth herein.	10. 37,595	11. \$78.00
12. To Be Used if Prisoner Transportation is being provided.	13. Guard Hour Rate: N/A Mileage shall be reimbursed by the Federal Government at the GSA Federal Travel Regulation Mileage Rate.	
14. Local Government Certification <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct, this document has been duly authorized by the body governing of the Department or Agency and the Department or Agency will comply with all provisions set forth herein.</i>	15. Signature of Person Authorized to Sign (Local)	
	Signature	
	Name	
	Title	
		Date
16. Prisoner & Detainee Type Authorized	17. Signature of Person Authorized to Sign (Federal)	
<input checked="" type="checkbox"/> Adult Male		
<input type="checkbox"/> Adult Female	Signature	
<input type="checkbox"/> Juvenile Male	Jackie Gomez	
<input type="checkbox"/> Juvenile Female	Name	
	Grants Specialist	
	Title	
	Date	
	MAR 23 2007	

Agreement Number 97-99-0196

Authority	3
Purpose of Agreement and Security Provided	3
Period of Performance	4
Assignment and Outsourcing of Jail Operations	4
Medical Services.....	4
Receiving & Discharge of Federal Detainees	5
Special Notifications.....	5
Administrative Orders & Agency Instructions.....	5
Service Contract Act	6
<i>Per-Diem</i> Rate	6
Billing and Financial Provisions	7
Payment Procedures	8
Modifications and Disputes.....	8
Inspections of Services.....	8
Liability	8

Agreement Number 97-99-0196

Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Acts of 2001 (Public Law 106-553), this Agreement is entered into between the United States Marshals Service (hereinafter referred to as the "Federal Government") and Kern County, California (hereinafter referred to as "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows three (3) Federal Government components, specifically, the United States Marshals Service (USMS) and the Federal Bureau of Prisons (BOP) of the Department of Justice (DOJ); and the United States Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS), to house federal detainees with the Local Government at the Kern County Jail, Lredo County Jail, and Kern County Sheriff's Department (hereinafter referred to as "the facility"). For purposes of this Agreement, the term "Federal Government", as used herein, shall mean any and all of the three Federal Government components responsible for housing federal detainees, e.g. any notices required to be provided to the Federal Government, including invoices, shall be provided to the specific Federal Government component responsible for each federal detainee, or material witness.

The population, hereinafter referred to as "federal detainees," will be individuals sentenced or charged with federal offenses and detained while awaiting trial or sentencing awaiting designation and transport to a BOP facility, a hearing on their immigration status, or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of federal detainees in accordance with state and local laws, standards and procedures, or court orders applicable to the operations of the facility, consistent with federal law, policies and regulations. Unless otherwise specified by this Agreement, the Local Government is required, in units housing federal detainees, to perform in accordance with the most current versions of the mandatory standards of the American Correctional Association (ACA) "Standards for Adult Local Detention Facilities (ALDF)", and the essential National Commission on Correctional Health Care (NCCHC) Standards, and the Federal Performance-based Detention Standards (www.usdoj/ofdt/standards.htm). In addition, where ICE federal detainees are housed, the ICE federal detainees are to be housed in accordance with ICE Standards (www.ice.gov/partners/dro/opsmanual/index.htm). In cases where other standards conflict with DOJ/DHS/ICE policy or standards, DOJ/DHS/ICE policy and standards prevail.

At all times, the Federal Government shall have access to the facility and to the federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period not less than 3 years.

This Agreement shall not affect any pre-existing, unrelated agreements between the parties or with any other third party or parties.

Agreement Number 97-99-0196

Period of Performance

This Agreement is effective upon the date of signature of both parties, and remains in effect unless terminated by either party with written notice. The Local Government shall provide no less than 120 calendar days notice of their intent to terminate. Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

Assignment and Outsourcing of Jail Operations

Overall management and operation of a facility housing federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government is financially responsible for all medical treatment provided to federal detainees within the facility. The Local Government shall provide the full range of medical care required within the facility including dental care, mental health care, pharmaceuticals, and record keeping, as necessary to meet the essential standards of the National Commission of Correctional Health Care's Standards for Health Services of Jails (current edition).

The Local Government will submit to the Federal Government requests for approval of all treatment to be provided outside the facility. The Federal Government shall be responsible for the cost of approved outside medical treatment.

In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the federal detainee's illness or injury, type of treatment provided, and the estimated cost thereof.

The Local Government shall promptly forward medical invoices for outside medical care to the Federal Government within 30 days of receipt.

The facility shall have in place an adequate infectious disease control program, which includes testing all federal detainees at the facility for tuberculosis (TB) as soon as possible upon intake (not to exceed 14 days) and read within 72 hours. TB testing shall be accomplished in accordance with the latest CDC Guidelines and the results documented on the federal detainee's medical record. The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB so that any scheduled transports or production can be delayed until a physician verifies the federal detainee's TB status.

When a federal detainee is being transferred and/or released from the facility, they will be provided with seven (7) days of prescription medication which will be dispensed from the facility. When possible, generic medications should be prescribed. Medical records must travel with the federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a federal detainee is moved.